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OFFICE OF PETITIONS

In re Application of
Gianpiero Mastinu et al
Application No. 10/565,338
Filed: January 19, 2006
Attorney Docket No. 163-679

DECISION ON PETITION

This is a decision on the renewed petition, filed March 5, 2009, under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely file a proper reply to the nonfinal Office action mailed December 31, 2007 and the Notice mailed May 16, 2008. A Notice of Abandonment was mailed on January 9, 2009.

Petitioner asserts that the Notice of Non-Compliant Amendment mailed May 16, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to Technology Center AU 2855 for appropriate action by the Examiner in the normal course of business on the reply received January 21, 2009.



Karen Creasy
Petitions Examiner
Office of Petitions